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HAROLD B. WILLEY, Clerk

In the

Supreme Court of the United States

OCTOBER TERM, 1955

No. 516

THE FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION OF NEW HAVEN,

Appellant,

v.

WILLIAM F. CONNELLY, TAX COMMISSIONER OF THE STATE OF CONNECTICUT,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF ERRORS OF THE STATE OF CONNECTICUT

APPELLANT'S JURISDICTIONAL STATEMENT

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Dated: November 1, 1955.

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JURISDICTIONAL STATEMENT

Appellant appeals from the final judgment of the Supreme Court of Errors of the State of Connecticut, rendered and entered on June 21, 1955 for the appellee-tax commissioner; and submits this statement in compliance with Rule 15 to show that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial federal question is presented.

(a)—Opinion Below

The opinion of the Supreme Court of Errors of the State of Connecticut is officially reported in 142 Conn. 483. Copies of this opinion and the judgment of said Court are appended hereto as Appendix A. No other opinion was rendered in this case.

(b)—Jurisdiction

(i) This suit originated as an appeal, under Section 1917 of the Connecticut General Statutes, Revision of 1949, taken by the taxpayer-appellant from a certain assessment of an additional corporation business tax under Chapter 91 of said statutes, as amended by Section 896c of the 1953 Cumulative Supplement to said statutes, by the Tax Commissioner of the State of Connecticut. This appeal was taken pursuant to said statutes to the Superior Court for Hartford County. In said Court all of the facts were stipulated by the parties; and the questions of law arising thereon were reserved by said Court for the advice of the Supreme Court of Errors of the State of Connecticut.

(ii) Said Supreme Court of Errors rendered its judgment adjudicating all the pertinent issues in favor of the appellee-tax commissioner under date of June 21, 1955; and the judgment was entered as of that date. No petition for rehearing was filed.

Notice of appeal to the Supreme Court of the United States was filed on September 16, 1955 in the Supreme Court of Errors of the State of Connecticut.

(iii) Jurisdiction of the Supreme Court of the United States to review by appeal the judgment complained of is conferred by Title 28, United States Code, Section 1257(2) in that the validity of said Chapter 91 of the Connecticut General Statutes, as so amended, was drawn in question on the ground of its being repugnant to the Constitution of the United States and the final judgment of the highest court of the state, to-wit, the Supreme

Court of Errors of the State of Connecticut, was in favor of the validity of said state statutes.

(iv) The following cases sustain the jurisdiction of the Supreme Court of the United States to review the judgment on appeal in this case: *Welch* v. *Henry*, 305 U.S. 134, 141-142 (1938); *Flurnoy* v. *Wiener*, 321 U.S. 253, 263 (1944); *Zucht* v. *King*, 260 U.S. 174 (1922).

(v) The statutes of the State of Connecticut whose validity is involved are Chapter 91 of the Connecticut General Statutes, Revision of 1949 (Sections 1896 to 1921, inclusive), as amended by Section 896c of the 1953 Cumulative Supplement to said Statutes.

Said Section 896c reads as follows:

> "Sec. 896c. 'INTEREST PAID' DEFINED. Retroactively applied to all income years or periods ending on or after January 1, 1952, the words 'interest paid,' as used in this chapter, shall mean and include, in the case of mutual savings banks, cooperative banks, building and loan associations, and savings and loan associations, amounts paid to, or credited to the accounts of, depositors or holders of accounts as dividends on their deposits or withdrawable accounts, if such amounts paid or credited are withdrawable on demand subject only to customary notice of intention to withdraw. (Effective June 9, 1953)."

The pertinent portions of the balance of Chapter 91 are appended hereto as Appendix B.

(c)—Question Presented

After plaintiff had computed its earnings, set aside the reserves required by law, and paid as dividends all of its net profits, as required by controlling law, and after rights of it and its shareholders had vested, and after all then existing taxes had been

paid, is Section 896c of the 1953 Supplement to the General Statutes of Connecticut, enacted on June 9, 1953, which increased the corporation business tax of plaintiff and other institutions represented by plaintiff for the calendar year 1952 and made the increase carry interest from a date two months or more prior to the enactment of said Section 896c, an unconstitutional statute in that its retroactive effect violates the Fourteenth Amendment to the Federal Constitution?

(d)—Statement of the Case

Chapter 91 of the Connecticut General Statutes, Revision of 1949, imposes an annual tax of 3% upon the entire net income of corporations described therein, which net income is defined as the difference between the gross income as defined in the Fedral corporation net income tax law in force on the last day of the income year and (with certain exceptions) the items deductible under the Federal corporation net income tax law effective and in force on the last day of the income year. Exemptions from the tax include "companies exempt by federal law or by the regulations of the bureau of internal revenue from the federal corporation net income tax." (P. 17, *infra*.) Section 896c of the 1953 Cumulative Supplement, effective June 9, 1953, amended Chapter 91 by redefining non-deductible interest to include dividends on share accounts; this amendment was made retroactive to all income years or periods ending on or after January 1, 1952.

Plaintiff is a corporation chartered under the laws of the United States and particularly under the Home Owners' Loan Corporation Act, 12 U.S.C. Section 1464 *et seq*. It has been designated as a fiscal agent of the government. Its charter and by-laws are as prescribed by the laws of the United States and are substantially the same as those of other corporations similarly organized. (R. 6.)

On or before April 1, 1953, plaintiff duly filed its Connecticut tax return under said Chapter 91 for the calendar year 1952, which

return was due on or before April 1, 1953. This return showed a tax due of $1,836.47, which amount was paid with the return. One of the items listed under "Other deductions authorized by law" was the dividends paid to its members in 1952 in the amount of $648,149.07, which deduction was allowable under the Connecticut law as it then stood. (R. 6.)

Acting under Chapter 91 as amended by Section 896c of the 1953 Cumulative Supplement, enacted June 9, 1953, and on June 16, 1953, the Tax Commissioner of the State of Connecticut issued to plaintiff an assessment of an additional tax of $18,878.13 together with interest of $339.81 for the year *1952*. Similar assessments were issued against and paid by fourteen federally chartered savings and loan associations in the State of Connecticut totaling $69,390.22 and against fifteen state chartered building and loan associations totaling $41,151.36. All of said assessments were paid under protest within the time limited in the assessment. Prior to January 1, 1952, none of said corporations was liable for the payment of Federal income taxes but since said date they have been so liable. All of said assessments for the year *1952* were made pursuant to said Section 896c, enacted June 9, 1953. (R. 7-9.)

An appeal was taken by plaintiff from the assessment against it in connection with which appeal it was agreed that the tax liability of the other twenty-nine corporations should be governed by the final judgment. (R. 8-9.) All of the facts were stipulated (R. 6-12), and the case was reserved by the Superior Court for the advice of the Supreme Court of Errors with respect to specific questions (R. 12-13.) Included within the reserved questions was the following question identified as A, which read as follows:

> "A. Is the retroactive application of Section 896c an invalid attempt to impose a retroactive tax in violation of the State and Federal Constitutions?" (R. 13.)

In its opinion the Supreme Court of Errors of the State of Connecticut discussed the federal constitutional questions underlying "A" in a manner fully supporting the question presented by this appeal (*supra*, p. 3, and discussed immediately *infra*); denied the federal claims (as well as the State claims); answered the above question "No"; and ordered judgment for the appellee-tax commissioner. (Opinion, Appendix A, *infra*, p. 11.)

(e)—The Question Is Substantial

The question presented by this appeal, *supra*, p. 3, involves the validity, under the due process clause of the Fourteenth Amendment to the Federal Constitution, of the 1953 amendment to the Connecticut tax law. This amendment, enacted by the State on June 9, 1953, did not impose a new tax. It attempted to change the amount of the 1952 tax that had already been assessed, paid, and accepted by the Tax Commissioner, with penalty interest for failure to pay the tax on a date prior to the enactment of the statute. And this imposition in 1953 of a 1952 tax occurred after rights of the appellant and its shareholders had vested pursuant to controlling law—a matter subsequently developed in more detail.

The instant case lies somewhere between two lines of cases decided by this Court concerning the validity of retroactive taxation.

The first line is illustrated by such leading cases as *Stockdale* v. *Insurance Companies*, 20 Wall. 323, 331 (1873); *Brushaber* v. *Union Pacific R. R.*, 240 U.S. 1, 20 (1916); *United States* v. *Hudson*, 299 U.S. 498, 500 (1937); and *Welch* v. *Henry*, 305 U.S. 134, 147 (1938). In all of them it is important to note that the tax in question was a completely new tax. The only claim to retroactivity in them was that the new tax was measured by events that occurred prior to its enactment. None of them involved an attempt to change a tax that had already been assessed

and paid. In none of them was an attempt made to make a new tax payable at a date prior to its enactment. In *Welch* v. *Henry*, for example, the tax involved was an income tax of the State of Wisconsin. The tax was payable at a future date on the basis of tax returns to be made subject to the new requirements. Obviously a tax of that nature, if it is to be payable in the near future, must be based on past events. And, if resort is not made to unreasonably remote past events, it is valid.

The present case does not fall within these decisions. The tax for the year 1952 was due on or before April 1, 1953, and had been fully paid more than two months before the enactment of Section 896c of the 1953 Supplement to the General Statutes of Connecticut. The amending statute did not set a date for payment in the future. It attempted to alter the 1952 tax already assessed and paid. And as shown below the effect of it was to render illegal the dividend that appellant was required to and did pay to its shareholders on December 31, 1952, although that dividend was legal when made. This result was achieved by amending a definition contained in the original taxing act so as to disallow a substantial deduction to which plaintiff was entitled under the law as it stood on December 31, 1952. Clearly the case is not within the first line of decisions.

The second line of decisions above referred to is illustrated by such cases as *Untermeyer* v. *Anderson*, 276 U.S. 440, 445 (1928), and *Milliken* v. *U. S.*, 283, U.S. 15, 21 (1931). In the second of these cases a gift made in contemplation of death was held to be properly taxable according to the rates of tax and the exemptions under the law in force at the date of death because at the time of transfer such conveyances had been considered as a substitute for testamentary dispositions so that the transferor knew that the property would ultimately be treated as part of his estate for tax purposes. He had to run the same risk of increased rates that a buyer of real estate runs so that the possible con-

sequences of the transferor's voluntary act could be reasonably foreseen. In the *Untermeyer* case it was decided that a gift tax law could not apply to a gift already completed before the passage of the act even though the act was in process of passage at the time of the gift. It was said that, "The taxpayer may justly demand to know when and how he becomes liable for taxes." The question of the vesting of rights by the act of the taxpayer was obviously an important basis for this decision.

The present case is manifestly more closely analogous to this second line of decisions than to the first line. The same question of guiding one's conduct by what can be reasonably foreseen is present here. Plaintiff was required under its charter and the laws of the United States to close its books on December 31st of each year, set up required reserves, and then declare a dividend of *all* its net profits as thus determined. (R. 22.) When it declared this dividend on December 31, 1952 each holder of a share account was vested with the right to receive it and plaintiff was subjected to a corresponding obligation to pay it out of the net profits of 1952. This was a case of a mandatory vesting. In performing these acts plaintiff could not reasonably foresee or expect that the legislature would change the law upon which plaintiff had relied so as to make the amount of dividend improper and illegal. And, further, there was no feasible way for plaintiff to set up a reserve against such a contingency because it was impossible to foresee the nature or extent of the changes that would be made. If the legislature had followed the example of the Wisconsin legislature in *Welch* v. *Henry, supra*, it would have made the tax payable at a future date in the nature of a new tax in 1953 even though the amount was measured by the previous year's income. Plaintiff would then have been able to take the new tax into consideration in fixing the amount of the dividend when the following December 31, 1953 arrived.

The difference between the two lines of cases can be clarified by analogy to a hypothetical situation. Let us suppose that the tax on a piece of real property in New Haven, Connecticut, is assessed as of June 1st in each year (both as to value and as to ownership) and made payable during the following January. Let us suppose further that the tax was at the rate of twenty-five mills and was duly paid in January by the taxpayer. Clearly the legislature could enact a law the following June laying a special additional tax for *that* year, and measuring the tax by the assessments of the previous June 1st. Such a situation would be within the scope of the first line of decisions of this Court. It is submitted, however, that the legislature could not properly make the new tax a tax for the previous year and subject to interest because the taxpayer did not pay it in January, particularly where by so doing it renders prior action by the taxpayer illegal. Legislative fiat cannot turn time back. And mere legislative enactment "can never create a demand against a party who is not bound before, either legally or equitably." *Shay's Appeal from Probate*, 51 Conn. 162, 164 (1883).

Failure of the Supreme Court of Errors of the State of Connecticut to apply the second line of decisions of this Court presents a substantial federal question. It is also one of broad importance in that the question affects all the savings and loan associations of the State of Connecticut; and, albeit the particular enactment under attack is applicable only to the calendar year 1952, the proper principles that are applicable to retroactive state tax legislation are of public importance. If the 1953 legislature is allowed by the courts to do such a thing to this extent, to what other extent, of even greater hardship and uncertainty for the taxpayer, cannot future legislatures do it year after year if this judgment is allowed to stand?

CONCLUSION

It is submitted that the validity of Chapter 91 of the Connecticut General Statutes, as retroactively amended in 1953, was drawn in question on the ground of its repugnancy to the Constitution of the United States; and that the judgment of the Supreme Court of Errors of the State of Connecticut sustained the validity of said state statute and denied the constitutional claim. We believe that the question presented by this appeal is substantial and that it is one of public importance.

Respectfully submitted,

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Dated: November 1, 1955.

APPENDIX A

OPINION OF THE SUPREME COURT OF ERRORS OF THE STATE OF CONNECTICUT

THE FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION OF NEW HAVEN *v.* WILLIAM F. CONNELLY, TAX COMMISSIONER

BALDWIN, J. The plaintiff is a corporation organized under the laws of the United States. 48 Stat. 132, as amended, 12 U.S.C. § 1464. It appealed to the Superior Court from an assessment by the defendant of an additional corporation business tax upon its net income. General Statutes, c. 91. Twenty-nine other savings and loan associations, fourteen of which are corporations organized under the laws of the United States, and fifteen, under the laws of this state, are situated similarly to the plaintiff with respect to the assessment of an additional tax. The Superior Court has reserved the case for advice upon stipulated facts.

The Connecticut corporation business tax law imposed upon savings and loan associations, among other corporations doing business in this state, a tax of 3 per cent of net income derived from business in Connecticut. Cum. Sup. 1951, § 397b (as amended, Cum. Sup. 1953, § 883c). In arriving at net income, "all items deductible under the federal corporation net income tax law effective and in force on the last day of the income year," except, with respect to the case at bar, "interest paid during the income year," were deductible from "gross income," whether or not the taxpayer was required to pay a tax to the federal government. Cum. Sup. 1953, § 886c. The plaintiff's fiscal year ended on December 31, 1952. Before April 1, 1953, it filed its tax return for 1952 showing a tax due of $1836.47, which it paid. It claimed, under the heading "Other deductions authorized by law," $769,665.68 as properly deductible from gross income in arriving at net income. This sum included $648,149.07 for

dividends paid its members. The defendant refused to allow this deduction and assessed an additional tax against the plaintiff of $18,878.13, with interest of $339.81. He took similar action against the twenty-nine other savings and loan associations.

Prior to January 1, 1952, the plaintiff had not claimed a deduction in its Connecticut tax return for dividends paid to its members. It had not been required to pay a federal income tax. Effective January 1, 1952, the Congress amended the Internal Revenue Code so as to subject savings and loan associations such as the plaintiff to the federal income tax. Int. Rev. Code of 1939, § 104(a), as amended, 65 Stat. 491; see 3 CCH 1955 Stand. Fed. Tax Rep. ¶ 3408.001.[1] In determining net income subject to the federal tax, the code allowed the deduction from gross income of dividends paid by banking corporations. Int. Rev. Code of 1939, § 23(r)(1), added by 65 Stat. 491; 26 C. F. R. § 39.23 (r)-1 (1953). As dividends were deductible from gross income under the federal income tax law, the plaintiff took the same deduction in computing the state tax. Cum. Sup. 1953, § 886c.

At its regular session in 1953, the General Assembly redefined the term "interest paid," as contained in § 886c, to include "amounts paid to, or credited to the accounts of, depositors or holders of accounts as dividends on their deposits or withdrawable accounts" in mutual savings banks, cooperative banks, building and loan associations, and savings and loan associations, "if such amounts paid or credited are withdrawable on demand subject only to customary notice of intention to withdraw." Cum. Sup. 1953, § 896c.[2] This amendment became effective June 9, 1953, and by its terms was made to apply, retroactively, to all income years or periods ending on or after January 1, 1952. The United

[1]This was accomplished by amending the definition of taxable banks to include such institutions as the plaintiff.

[2]"Sec. 896c. 'INTEREST PAID' DEFINED. Retroactively applied to all income years or periods ending on or after January 1,

States treasury department has ruled that money paid to depositors in federal savings and loan associations is not interest but dividend income, so that returns showing information concerning such dividend income were required under § 148 of the Internal Revenue Code of 1939. I. T. 4045, 1951-1 Cum. Bull. 34. The amount of dividends payable to the plaintiff's depositors on January 30 and December 31, 1952, was determined by its directors on the assumption that these dividends would be deductible in computing net income under the Connecticut corporation business tax law.

The questions presented for our advice are set forth in a footnote.[3] They raise the basic issues (1) whether the legislature could define the term "interest paid" to include dividends paid or credited to depositors on deposits or withdrawable accounts in savings and loan associations, and (2) whether § 896c is unconstitutional.

1952, the words 'interest paid,' as used in this chapter, shall mean and include, in the case of mutual savings banks, cooperative banks, building and loan associations, and savings and loan associations, amounts paid to, or credited to the accounts of, depositors or holders of accounts as dividends on their deposits or withdrawable accounts, if such amounts paid or credited are withdrawable on demand subject only to customary notice of intention to withdraw. (Effective June 9, 1953.)"

[3]"A. Is the retroactive application of Section 896c an invalid attempt to impose a retroactive tax in violation of the State and Federal Constitutions?

"B. Does said Section 896c apply to federal savings and loan associations, and if it does not, then is there an unlawful discrimination against the other types of institutions enumerated therein?

"C. Is the tax imposed by Chapter 91 invalid as constituting an unconstitutional discrimination among various types of corporations?

"D. Are federal savings and loan associations, including the plaintiff, exempt from the tax imposed by Chapter 91 as instrumentalities of the United States?

The plaintiff claims that such dividends are not in fact interest and cannot be taxed as such. When the Congress subjected savings and loan associations to a tax on their net income, it provided that the amount paid or credited as dividends on depositors' accounts could be deducted in determining net income. Int. Rev. Code of 1939, § 23(r)(1), added by 65 Stat. 491. At that time General Statutes, Cum. Sup. 1953, § 886c, allowed the same deductions as the federal law in computing net income under the Connecticut law except, among other exceptions not here pertinent, "interest paid during the income year." Savings and loan associations prior to the imposition of the federal income tax had never claimed dividends as a deduction in computing net income subject to the Connecticut tax. Consequently, to make it clear that the tax on dividends as part of net income continued, in spite of the provision exempting them from the federal income tax, the General Assembly enacted § 896c, redefining the term "interest paid" to include dividends paid on accounts in savings and loan associations. When legislation contains a specific definition of a word or term, courts must accept that definition in construing the legislation. *United Aircraft Corporation* v. *O'Connor*, 141 Conn. 530, 537, 107 A.2d 398; *Danbury* v. *Corbett*, 139 Conn. 379, 384, 94 A.2d 6; 2 Sutherland, Statutory Construction (3d Ed.) § 3002. Other courts accept the construction placed

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"E. Is Chapter 91, and in particular Section 896c, invalid as an unconstitutional delegation of legislative power by the General Assembly to the Congress of the United States?

"F. Without reference to the validity or effect of Section 896c, are the dividends paid to depositors by mutual saving banks, building and loan associations and like institutions of substantially the same nature and character as the interest payments made to depositors in banks operated by corporations with capital stock, so that a deduction for dividends should be denied because of the express denial of a deduction for interest paid?

"G. Is the Plaintiff entitled to any refund of tax, and if so, how is it to be computed?"

upon a statute by the highest court of the state in which the statute was enacted. *Smiley* v. *Kansas*, 196 U.S. 447, 455, 25 S. Ct. 289, 49 L. Ed. 546; 14 Am. Jur. 302, § 89.

The legislative intent of § 896c was to make clear that amounts paid as dividends by savings and loan associations would continue to be subject to the Connecticut tax. The legislature has the power to choose the subject matter of taxation and to fix the method and extent of a tax, subject to certain limitations pertinent to this case which the plaintiff has raised and which will be considered later in this opinion. *Norwalk* v. *New Canaan*, 85 Conn. 119, 124, 81 A. 1027; *State* v. *Murphy*, 90 Conn. 662, 666, 98 A. 343; *State ex rel. Brush* v. *Sixth Taxing District*, 104 Conn. 192, 198, 132 A. 561. If it chose to enact provisions, relatting to the subject matter of the tax and the deductions to be allowed, different from those contained in federal income tax legislation, it had the power to do so.

The plaintiff claims that § 896c is retroactive legislation and violates the due process clauses of the federal and state constitutions. It asserts that it filed its tax return and paid the tax on the basis of the law in force at the time the tax was due and payable. When the plaintiff was brought under the federal income tax statute in 1952, the General Assembly was not in session. The regular session of 1953 offered the first opportunity it had for dealing with any change brought about by the action of the Congress. Furthermore, the effect of § 896c, as previously stated, was simply to clarify a provision of the Connecticut law. It imposed no new tax upon the plaintiff but simply required it to continue to pay a tax which, for the years prior to 1952, it had been paying regularly. The section did no more than remove a possible claim for a deduction which the plaintiff had not theretofore enjoyed. *Blodgett* v. *Bridgeport City Trust Co.*, 115 Conn. 127, 141, 161 A. 83. A future tax can be measured by a past assessment or by the income of a period which has passed.

Stockdale v. *Insurance Companies,* 87 U.S. (20 Wall.) 323, 331, 87 L. Ed. 348; *Brushaber* v. *Union Pac. R. Co.,* 240 U.S. 1, 20, 36 S. Ct. 236, 60 L. Ed. 493; *United States* v. *Hudson,* 299 U.S. 498, 500, 57 S. Ct. 309, 81 L. Ed. 370; *Welch* v. *Henry,* 305 U.S. 134, 146, 59 S. Ct. 121, 83 L. Ed. 87. Under the circumstances of this case, it cannot be said that the plaintiff could not reasonably have anticipated either the nature or the amount of the tax it was expected to pay. *Milliken* v. *United States,* 283 U.S. 15, 22, 24, 51 S. Ct. 324, 75 L. Ed. 809. The retroactive effect of § 896c does not render it unconstitutional.

The plaintiff contends that the Connecticut corporation business tax is unlawfully discriminatory. It argues that commercial corporations can deduct the cost of the goods they sell, while savings and loan associations are taxed upon dividends which they must pay to obtain deposits, which are, in effect, the stock in trade with which they do business. The plaintiff urges, further, that electric cooperatives and credit unions are exempt from the tax. General Statutes § 5349; Cum. Sup. 1953, § 883c(2); Int. Rev. Code of 1954, § 501(c)(14). The legislature has a wide discretion in the classification of property for taxation and in granting exemptions. *New Haven Metal & Heating Supply Co.* v. *Danaher,* 128 Conn. 213, 219, 21 A.2d 383. The classification must be reasonable and not arbitrary and must be based upon a distinction which bears a fair and substantial relation to the object of the legislation so that all who are similarly situated are treated alike. *Spector Motor Service, Inc.* v. *Walsh,* 135 Conn. 37, 64, 61 A.2d 89; *F. S. Royster Guano Co.* v. *Virginia,* 253 U.S. 412, 415, 40 S. Ct. 560, 64 L. Ed. 989. This test is adequately met in the case at bar.

The plaintiff claims that it is an instrumentality of the federal government and cannot be taxed except as the Congress consents. *First National Bank & Trust Co.* v. *West Haven,* 135 Conn. 191, 192, 62 A.2d 671. In the case at bar that consent is limited to

a state tax on income which is no greater than that imposed on other similar local mutual or co-operative thrift and home financing institutions. 48 Stat. 133, as amended, 12 U.S.C. § 1464 (h). Section 397b of the 1951 Cumulative Supplement (as amended, Cum. Sup. 1953, § 883c) imposes this tax upon "[e]very mutual savings bank, savings and loan association and building and loan association doing business in this state." The plaintiff falls squarely into this group. Then too, if we were to hold that federally incorporated savings and loan associations did not fall into the classification of organizations which are taxed under § 397b, we would be adopting a construction of that section discriminatory as to state incorporated savings and loan associations. It is true, as the plaintiff points out, that electric co-operatives and credit unions are not subject to the tax. It could not reasonably be said, however, that the plaintiff should be classified with them.

The plaintiff attacks the constitutionality of the corporation business tax law on the ground that it is an unlawful delegation of legislative power to the federal government. The plaintiff points out that § 396b of the 1951 Cumulative Supplement (as amended, Cum. Sup. 1953, § 882c) accepts the definition of gross income "as defined in the federal corporation net income tax law in force on the last day of the income year"; that § 397b(2) (as amended, § 883c [2]) grants exemption to "companies exempt by federal law or by the regulations of the bureau of internal revenue from the federal corporation net income tax," and that § 886c prescribes that, to determine taxable net income, deductions from gross income shall be allowed, with certain exceptions, according to the federal law effective at the end of the income year. This is not a delegation of legislative power but an incorporation by reference of the federal law into the state law. State law lays a tax on the franchise or privilege of a corporation to do business in this state. *Stanley Works* v. *Hackett*, 122 Conn. 547, 551, 190 A. 743; *Spector Motor Service, Inc.* v. *Walsh*, 135

Conn. 37, 49, 61 A.2d 89. The state legislature and not the Congress has selected net earnings as the base for determining the amount of this tax and has fixed the rate to be paid on that tax base. As a matter of convenience to the taxpayer and economy to the state, the legislature has adopted some of the standards employed in the federal corporation net income tax law. *Underwood Typewriter Co.* v. *Chamberlain*, 94 Conn. 47, 65, 108 A. 154, aff'd, 254 U.S. 113, 41 S. Ct. 45, 65 L. Ed. 165.

Section 896c makes dividends non deductible if the amounts so paid or credited are "withdrawable on demand subject only to customary notice of intention to withdraw." The plaintiff claims that its dividends are not withdrawable subject "only to customary notice of intention to withdraw." Section 9 of the plaintiff's charter requires that dividends on "savings share accounts" be credited on the dividend date. Section 12 permits the holders of "share accounts" to apply for the "repurchase," by the plaintiff, of all or part of their accounts at any time. Written applications for "repurchase" are recorded in the order of filing, and the applicants receive payments of the "repurchase value" in that order. No shareholder may receive a payment of more than $1000 at any one time. A "share account" is essentially the same as a deposit in a savings bank. Section 5825 of the General Statutes permits savings banks to invoke a similar procedure. It is a matter of common knowledge that shareholders in savings and loan associations as well as depositors in savings banks are usually permitted to withdraw principal or interest at will. It is only in times of threatened heavy withdrawals that provisions such as those described above are enforced. But if savings and loan associations did enforce their charter provisions regarding withdrawals and savings banks did not, it would make no difference. Section 896c uses the term "customary notice of intention to withdraw" with obvious reference to the notice customarily used by savings and loan associations. If the legis-

lature had used the term "statutory notice of withdrawals," it could have meant only the notice provided in § 5825. It used, instead, a general, all-encompassing term. We hold that amounts paid as dividends or interest are "withdrawable on demand subject only to customary notice of intention to withdraw," within the meaning of § 896c.

To questions A, C, D, E and G, we answer "No"; to question B, we answer that §896c applies to federal savings and loan associations; we decline to answer question F because an answer to it is not necessary to a determination of the issues framed by the pleadings.

No costs will be taxed in this court in favor of either party.

In this opinion the other judges concurred.

JUDGMENT OF THE SUPREME COURT OF ERRORS OF THE STATE OF CONNECTICUT

At a Supreme Court of Errors holden at Hartford within and for the County of Hartford in the State of Connecticut on the First Tuesday of May, 1955.

No. 4100

THE FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION OF NEW HAVEN, a Savings and Loan Institution incorporated under the laws of the United States of America, and located in the Town and County of New Haven, and State of Connecticut,

vs.

WILLIAM F. CONNELLY, Tax Commissioner of the State of Connecteiut.

June 21, 1955.

JUDGMENT.

This reservation presenting questions of law which have arisen in the trial of a case, pending in the Trial Court, as may appear by the certified transcript of record and finding of the Trial Judge in said case on file in this Court, was made by the Superior Court for Hartford County on the 24th day of November, 1954, and came to this Court, on the first Tuesday of December, 1954, when the parties appeared and were fully heard.

Whereupon, it is considered and adjudged that the said Superior Court be and is hereby advised as follows:

To questions (a), (c), (d), (e) and (g), we answer "No"; To question (b), we answer that Section 896c applies to federal savings and loan associations; we decline to answer question (f) because an answer to it is not necessary to a determination of the issues framed by the pleadings.

By the Court,

RAYMOND G. CALNEN, Clerk.

Dated and Filed June 21, 1955.

APPENDIX B

Section 896c of the 1953 Cumulative Supplement to Chapter 91 of the Connecticut General Statutes, Revision of 1949, is set out in the text of the Jurisdictional Statement, *supra*, p. 3.

The pertinent portions of the balance of Chapter 91 are as follows:

Sec. 1896. DEFINITIONS. When used in this chapter, unless the context shall otherwise require, . . . the words "gross income" shall mean gross income as defined in the federal corporation net income tax law in force on the last day of the income year and, in addition, shall mean any interest received or interest paid by the taxpayer or losses of other calendar or fiscal years incurred by the taxpayer which are excluded from gross income for purposes of assessing the federal corporation net income tax; the words "net income" shall mean net earnings received during the income year and available for contributors of capital, whether they be creditors or stockholders, computed by subtracting from gross income the deductions allowed by the terms of section 1898; . . .

Sec. 1897. IMPOSITION OF TAX. Every mutual savings bank, savings and loan association and building and loan association doing business in this state, and every other corporation or association carrying on, or having the right to carry on, business in this state except . . . shall pay, annually, a tax or excise upon its franchise for the privilege of carrying on or doing business within the state, such tax to be measured by the entire net income as herein defined received by such corporation or association from business transacted within the state during the income year and to be assessed at the rate of three per cent; . . .

Sec. 1898. DEDUCTIONS FROM GROSS INCOME. In arriving at net income as defined in section 1896, whether or not the taxpayer is taxable under the federal corporation net income

tax, there shall be deducted from gross income all items deductible under the federal corporation net income tax law effective and in force on the last day of the income year, except (1) federal taxes on income or profits, losses of other calendar or fiscal years, interest received from federal, state and local government securities and specific exemptions, if any such deductions shall be allowed by the federal government, and (2) interest paid during the income year. This section shall affect all fiscal and calendar years beginning after January 1, 1947.

Sec. 1903. ANNUAL RETURN. Each company or fiduciary subject to the tax imposed under this chapter shall render to the tax commissioner, under oath or affirmation of at least one of its principal officers or of such fiduciary, as the case may be, an annual return, on forms prescribed and furnished by the commissioner, stating specifically the name of the business and the location of its principal office, the state where organized and the date of organization, the names and locations of all subsidiaries, the amount of its paid-up capital and surplus at the end of the income year, the amount of its undivided profits and reserves at the end of such year, the par value of all interest-bearing indebtedness at the end of such year, the items of gross income received during such year, the deductions permitted by law, the interest or rental payments during such year, the dividend payments and changes in capital, surplus and undivided profits during such year and such other facts as the tax commissioner may require for the purpose of making any computation required by this chapter. Such return shall be due on or before the first day of April of each year, except when the income year shall differ from the calendar year, when it shall be due within ninety days after the end of the fiscal year.

Sec. 1913. PAYMENT OF TAX. EXAMINATION OF RETURNS. The taxes imposed under the terms of this chapter shall be due and payable upon the last day upon which a return may be filed

ithout penalty under the terms of section 1903. Upon the filing f such return, the full amount of the tax payable, as the same hall be computed by the taxpayer, shall be paid to the tax com- issioner in cash or by check, draft or money order drawn to he order of the tax commissioner. The commissioner shall, ithin three years after the due date for the filing of such return, xamine it and, in case any error shall be disclosed by such xamination, shall, within thirty days after such disclosure, notify he taxpayer and the state comptroller thereof. Within thirty days f the mailing of such notice, the taxpayer shall pay to the com- issioner, in cash or by check, draft or money order drawn to he order of the tax commissioner, any additional amount of ax shown to be due by the corrected return or shall be paid by he state treasurer, upon order of the comptroller, any amount hown to be due it by such corrected return. The failure of the axpayer to receive any notice required by this section shall not elieve it of the obligation to pay the tax assessed under the erms of this chapter or any interest or penalties thereon.

Sec. 1915. Delinquent Taxes: Interest: Collection. o any taxes w ich are assessed under this chapter and which re not paid when due, there shall be added interest at the rate f six-tenths of one per cent for each month and fraction of a nonth which shall elapse from the due date of such tax to the late of payment.

Sec. 1916. Hearing by Commissioner. Any taxpayer, aving paid any tax as provided by this chapter, aggrieved by he action of the commissioner or his authorized agent in fixing he amount of such tax or in imposing any penalty hereunder, nay apply to the commissioner, in writing, within thirty days after he notice of such action is delivered or mailed to it, for a hearing nd a correction of the amount of the tax or penalty so fixed, etting forth the reasons why such hearing should be granted and he amount in which such tax should be reduced. The commis-

sioner shall promptly consider each such application and may grant or deny the hearing requested. If the hearing be denied, the applicant shall be notified thereof forthwith; if it be granted, the commissioner shall notify the applicant of the time and place fixed for such hearing. After such hearing the commissioner may make such order in the premises as may appear to him just and lawful, and shall furnish a copy of such order to the applicant. The commissioner may, by notice in writing, at any time within three years after the date when any return of any taxpayer shall have been due, order a hearing on his own initiative and require the taxpayer or any other individual whom he believes to be in possession of relevant information concerning the taxpayer to appear before him or his duly authorized agent with any specified books of account, papers or other documents, for examination under oath.

Sec. 1917. APPEAL. Any taxpayer aggrieved because of any tax laid under the provisions of this chapter may, within one month from the time provided for the payment of such tax, take an appeal therefrom to the superior court for Hartford county, which shall be accompanied by a citation to the tax commissioner to appear before said court. Such citation shall be signed by the same authority, and such appeal shall be returnable at the same time and served and returned in the same manner, as is required in case of a summons in a civil action. The authority issuing the citation shall take from the appellant a bond or recognizance to the state of Connecticut, with surety to prosecute the appeal to effect and to comply with the orders and decrees of the court in the premises. Such appeals shall be preferred cases, to be heard, unless cause appear to the contrary, at the first session, by the court or by a committee appointed by it. Said court may grant such relief as may be equitable, and, if such tax shall have been paid prior to the granting of such relief, may order the treasurer to pay the amount of such relief, with interest at the rate of six per cent per annum, to the aggrieved taxpayer.

NOV 25 1955
HAROLD B. WILLEY, Clerk

In the

Supreme Court of the United States

OCTOBER TERM, 1955

516

THE FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION OF NEW HAVEN,

Appellant,

v.

WILLIAM F. CONNELLY, TAX COMMISSIONER OF THE STATE OF CONNECTICUT,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF ERRORS OF THE STATE OF CONNECTICUT

MOTION OF APPELLEE TO DISMISS

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Hartford, Connecticut

Dated: November 21, 1955

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In the

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516

THE FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION OF NEW HAVEN,

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ON APPEAL FROM THE SUPREME COURT OF ERRORS OF THE STATE OF CONNECTICUT

MOTION OF APPELLEE TO DISMISS

I

The defendant, appellee, respectfully moves to dismiss the above appeal on the ground that said appeal does not present a substantial federal question or that the judgment appealed from rests on an adequate non-federal basis. This motion is made under the provisions of Rule 16.

II

Brief in Support of Motion

Though the notice of appeal contains three questions (Part III, notice of appeal), only one question is pressed in the jurisdictional statement (p. 3) and that is, whether the retroactive provision of Sec. 896c, 1953 Sup. to General Statutes of the State of Connecticut, violates any constitutional right which the plaintiff may have under the Fourteenth Amendment to the Federal Constitution.

Sec. 896c (which appears on p. 3 of jurisdictional statement) does not purport to levy a new tax or increase an old one. It merely defined more clearly than it appeared prior to its enactment what was meant by the words "interest paid" in the basic taxing statute.

Plaintiff implies in his jurisdictional statement that it was exempt from the imposition of the Connecticut corporation business tax prior to January 1, 1952, because it was exempt from the federal income tax prior to said date and the Connecticut statute did not tax corporations which enjoyed such exemption. This statement is not accurate. The statute involved is Sec. 397b, 1951 Sup. to General Statutes (formerly Sec. 1897, Rev. 1949, and as later amended, Sec. 883c, 1953 Sup.), and the material portion reads as follows:

> "*Imposition of tax.* Every mutual savings bank, savings and loan association and building and loan association doing business in this state, and every other corporation or association carrying on, or having the right to carry on, business in this state except . . . (2) companies exempt by federal law or by the regulations of the bureau of internal revenue from the federal corporation net income tax . . . shall pay annually, a tax or excise upon its franchise for the privilege of carrying on or doing business within the state . . ."

It is defendant's claim that the exception in the statute refers only to "every other corporation or association" doing business in the state and not to the plaintiff, which is a savings and loan association and is specifically made subject to tax irrespective of its exemption from the federal income tax prior to January 1, 1952. This construction of the statute was acquiesced in by the plaintiff for many years prior to the commencement of the present action. From the very inception

of the corporation business tax law, savings and loan associations were specifically made subject to the tax without the exemption contained in (2) of the statute (see Sec. 418c, 1935 Sup. to General Statutes when tax law was originally passed). The plaintiff has always recognized its liability for the tax in question by filing tax returns prior to January 1, 1952 and paying the tax without claiming a deduction for the amount of dividends paid to its members (Stip. of facts, par. 11, p. 9, printed record.)

Prior to January 1, 1952 the plaintiff, though it was not subject to the federal income tax, was allowed to deduct from its gross income all items deductible under the federal corporation income tax law by other corporations who were subject to it, except among other things, "interest paid during the income year" (Sec. 401b, 1951 Sup., also appearing as Sec. 886c, 1953 Sup.) This provision was in effect at least as far back as 1947 (see Sec. 1898, Gen. Stat. p. 21 juris. statement). It was understood by the taxpayer and the Tax Commissioner that the so-called dividends paid to its members constituted "interest" within the meaning of Sec. 401b, 1951 Sup. (formerly Sec. 1898 Gen. Stat.) and was not deductible. The plaintiff never attempted to deduct these dividend payments prior to January 1, 1952 (Stip. of Facts, par. 11, p. 9, printed record).

When the plaintiff became subject to the federal income tax law on January 1, 1952 it was allowed to deduct the dividends for the purposes of the federal tax and furthermore, the treasury department ruled that the so-called dividends did not constitute interest. At that time the General Assembly of the State of Connecticut was not in session. The regular session of 1953 offered the first opportunity it had to make it clear to the plaintiff that insofar as the Connecticut tax was concerned, the so-called dividends would still be considered as "interest paid" and not deductible on the state tax return (See op. Supreme Court of Errors, p. 15, juris. statement). Hence the enactment of the statute in question in June, 1953. This statute (Sec. 896c, 1953 Sup.) did not lay an additional tax. It merely made it clear that the legislature always considered the word "interest" in Sec. 886c to include "dividends" paid by the plaintiff type of corporation to its members, who were really depositors. The 1953 session of the General Assembly convened early in January and adjourned in June of that year. (Sec. 1 Gen. Stat. and Art. III Sec. 2 Const.

appearing in 1953 Sup. to Gen. Stat.) Plaintiff therefore is chargeable with knowledge that it was considering the bill in question and it should not have paid to its depositors the tax on the dividends.

Hence the question really is whether a state may define the meaning of a word in a taxing statute (namely "interest") retroactively for a reasonable period of time, in line with the previously accepted meaning of that word by the taxpayer. No question of retroactive interference with vested rights is involved. The validity of the basic taxing statute contained in Chap. 91, General Statutes, Rev. 1949, is not brought into question by plaintiff's appeal.

Plaintiff's tax for 1952 was due prior to April 1, 1953. In making that payment it deducted, for the first time, the dividends paid. This was contrary to its procedure in previous tax years. If it desired to save the interest which was assessed it could have paid the amount of the tax in dispute under protest prior to April 1, 1953 and then taken an appeal to the courts. If the appeal was sustained the refund of tax would have carried interest at the rate of 6% per annum (Sec. 1915-1917, Gen. Stat.). Plaintiff therefore cannot claim an invasion of its constitutional rights because of the assessment of interest on the tax deficiency.

Conclusion

For the foregoing reasons the defendant, appellee, claims that there is no substantial federal question involved and also that the judgment entered can be sustained on the ground that a taxing statute is not involved when the provisions of Sec. 896c, 1953 Sup., are enforced. Defendant therefore requests that his motion to dismiss be granted.

Respectfully submitted,

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Attorney General,
State of Connecticut,
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Assistant Attorney General,
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Attorneys for Appellee,
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Hartford, Connecticut

Dated: November 21, 1955

DEC 1 0 1955
HAROLD B. WILLEY, Clerk

In the

Supreme Court of the United States

OCTOBER TERM, 1955

No. 516

THE FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION OF NEW HAVEN,

Appellant,

v.

WILLIAM F. CONNELLY, TAX COMMISSIONER OF THE STATE OF CONNECTICUT,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF ERRORS OF THE STATE OF CONNECTICUT

APPELLANT'S BRIEF IN OPPOSITION TO MOTION OF APPELLEE TO DISMISS

EDWARD F. BECKER,
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Dated: December 5, 1955.

In the

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1955

No. 516

THE FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION OF NEW HAVEN,

Appellant,

v.

WILLIAM F. CONNELLY, TAX COMMISSIONER OF THE STATE OF CONNECTICUT,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF ERRORS OF THE STATE OF CONNECTICUT

APPELLANT'S BRIEF IN OPPOSITION TO MOTION OF APPELLEE TO DISMISS

The motion of Appellee to dismiss the appeal is based upon two alternative grounds: (1) that the appeal does not present a substantial Federal question, or (2) that the judgment appealed from rests on an adequate non-Federal basis.

I

THE APPEAL PRESENTS A SUBSTANTIAL FEDERAL QUESTION

There can be no question that when the validity of a st statute is properly challenged on the ground that it is in confl with the Constitution of the United States a Federal questi is raised. Appellant raised such a question as to the validity Section 896c, which imposed a retroactive tax upon appella this question was reserved as question "A" for the Supreme Co of Errors of the State of Connecticut; that court discussed t question extensively in its opinion, answered it "No" and there denied the Federal challenge. (See Juris. Statement pp. 3, 19.) While other questions were reserved for the State Co (see Juris. Statement pp. 13, 14) the only question pursued on t appeal is the aforesaid reserved question challenging the valid of Section 896c under the Federal Constitution.

In its Jurisdictional Statement (page 6) Appellant poin out that there were two lines of decisions by this Court w regard to the validity of retroactive taxation, in one of whi a new tax measured by past events was sustained and in t other of which a new tax was denied validity when it attempt to tax completed transactions. It was pointed out that the insta case lies somewhere between these two lines of decisions; t it is more nearly within the latter line; and that Section 89 violates the Federal Constitution.

The obvious and proper way for Appellee to meet this argum was by showing either that the cases cited by Appellant had sett the question so as to leave it no longer substantial or by pointi out one or more decisions of this Court that rendered the qu tion no longer substantial.

Appellee does not cite or discuss a single decision of this Court that disposes of the problem. Nor does it make any analysis thereof.

II

THE JUDGMENT APPEALED FROM DOES NOT REST ON AN ADEQUATE NON-FEDERAL BASIS

Substantially the entire argument in Appellee's motion is devoted to an affirmative answer to the question whether Appellant was liable for the additional tax without reference to Section 896c.

Question "F," which was reserved for the Connecticut Supreme Court, raised that matter. It read (see Juris. Statement, p. 14):

> "F. Without reference to the validity or effect of Section 896c, are the dividends paid to depositors by mutual savings banks, building and loan associations and like institutions of substantially the same nature and character as the interest payments made to depositors in banks operated by corporations with capital stock, so that a deduction for dividends should be denied because of the express denial of a deduction for interest paid?"

This question the Court below expressly refused to answer at all (Jurisdictional Statement, p. 19).

The Connecticut Supreme Court did not hold that the 1953 Amendment, Section 896c, "merely made it clear that the legislature always considered the word 'interest' . . . to include 'dividends' paid by the plaintiff . . .," as claimed by Appellee on Page 3 of his motion. If it had, it would have had to consider its own decision in *Preveslin* vs. *Derby & Ansonia Developing Co.*, 112 Conn. 129, 144 (1930), in which it was held that the legislature had no power to declare the true intent and meaning of a previous statute and give that meaning a retrospective operation. It did not, for example, say that Section 1898 of the Gen-

eral Statutes of Connecticut (Jurisdictional Statement, Page 2
should be interpreted so as to include the type of dividends pa
by Appellant in the statutory language "interest paid." If it ha
done this, Appellee would be correct in claiming that the judgme
below rested upon an adequate non-Federal basis in the absen
of a constitutional challenge to Section 1898.

Appellee also claims that Appellant was chargeable with know
edge that the bill in question was under consideration. In t
first place, it is a strange doctrine that citizens have constructi
notice of the pendency of bills in the legislature. In the seco
place, it appears from Appellee's own motion that there could ha
been no such bill pending until some time in January, 195
whereas Appellant was required by law to close its books a
declare its dividend on December 31, 1952, when no such b
could be pending. In the third place, there is nothing in the reco
to show how long after January 1, 1953, the bill was in fa
introduced. In the fourth place, the claim is at odds with t
decision in *Untermeyer* vs. *Anderson*, 276 U.S. 440, 445 (1928

The final suggestion that an alternative procedure had be
open to Appellant on December 31, 1952, has nothing to do,
course, with any argument as to the constitutionality of the su
sequent action that was in fact taken by the General Assemb
when it enacted Section 896c on June 9, 1953.

III

CONCLUSION

The judgment of the Supreme Court of Errors of the Sta
of Connecticut does not rest on an adequate non-Federal bas
The Court specifically refused to rest tax liability upon sta
statutes in effect when Appellant paid its tax, by refusing
answer question "F." Instead the Court passed upon the validi
of Section 896c and denied that it violated the Federal Constit

tion. This question, upon which the state court judgment rests, is substantial.

Respectfully submitted,

EDWARD F. BECKER,
CHARLES M. LYMAN,
JAMES WM. MOORE,
Counsel for Appellant,
129 Church Street,
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Dated: December 5, 1955.

No. 516. First Federal Savings and Loan Association of New Haven *v.* Connelly, Tax Commissioner of Connecticut. Appeal from the Supreme Court of

Errors of Connecticut. *Per Curiam:* The motion to dismiss is granted and the appeal is dismissed for want of a substantial federal question. *Edward F. Becker, Charles M. Lyman* and *James Wm. Moore* for appellant. *John J. Bracken,* Attorney General of Connecticut, and *Louis Weinstein,* Assistant Attorney General, for appellee. Reported below: 142 Conn. 483, 115 A. 2d 455.